IN THE

Supreme Court of the United States

OCTOBER TERM 1945.

No.....

STEVE TANDARIC,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

OPINION OF THE COURT.

The opinion of the Court below has not yet been officially reported. It is shown in the printed record at pages 61-65.

Grounds of Jurisdiction.

The preceding petition at pages 2-6 contains a statement of the grounds on which the jurisdiction of this Court is invoked. To avoid repetition reference is made thereto.

Statement of the Case.

The statement made in preceding Petition at pages 1-6, is here adopted and made a part of this brief. The facts and issues therein stated will be elaborated in the argument only to the extent found necessary and helpful in the argument, *infra.*

ERRORS ASSIGNED AND URGED.

The Circuit Court of Appeals erred:

1. In holding that 8 U. S. C. 746 (a) (18) is not repugnant to the due process clause of the Fifth Amendment to the Constitution.

2. In holding that 8 U. S. C. 746 (a) (18) does not abridge the freedom of speech guaranteed by the First Amendment to the Constitution.

3. In holding that 8 U. S. C. 746 (a) (18) is not in contravention of the Tenth Amendment to the Constitution as an enactment beyond the powers granted to Congress.

4. In holding that the Federal Government may punish an alien by fine and imprisonment under a law which was not enacted under any of the powers granted by the Constitution, and which does not involve the right or want of right of such alien to reside in this country.

5. In failing to construe 8 U. S. C. 746 (a) (18) so as to require the alien making a false statement of citizenship to have knowledge that such statement was material.

6. In holding that there was competent evidence that petitioner had represented himself to be a citizen of the United States, particularly in view of the fact that the Circuit Court of Appeals failed to limit the proof to the crime charged in the indictment and failed to rule that the document from which it quoted (exhibit 2, Appendix A-1), was *res inter alios acta* as to petitioner, and utter hearsay.

7. In sanctioning a departure by the trial Court from the accepted and usual course of judicial proceedings in the following respects:

(a) In permitting the Government to introduce

evidence, oral and documentary, in chief, as also on cross-examination, of other offenses, which were not relevant to any issue in this case.

(b) In overruling petitioner's motions for a directed verdict.

8. In departing from the accepted and usual course of judicial proceedings in the following respects:

(a) In ignoring or overlooking the fact that the Government introduced evidence of other offenses not only on cross-examination of petitioner, but on the introduction of evidence in chief.

(b) In making the unsupportable finding that Chapman prepared Exhibit 2, and the further finding that he was then told by petitioner that he is a citizen of the United States.

SUMMARY OF ARGUMENT.

I.

Invalidity of 8 U. S. C. 746 (a) (18).

A. The challenged provision of the statute is repugnant to the due process clause of the Fifth Amendment because it is ambiguous, vague and uncertain, and men of common intelligence must speculate as to its meaning.

B. This provision is repugnant to the guaranty of free speech in the First Amendment in that it makes the mere telling of a lie a criminal offense.

C. This provision is repugnant to the Tenth Amendment because Congress in the enactment thereof exceeded the power granted by Article 1, section 8, clause 4 of the Constitution "To establish a uniform rule of naturalization."

II.

Interpretation and meaning of 8 U. S. C. 746 (a) (18).

The legislative history of the Nationality Act of 1940 sheds little light on the object and the scope of the challenged provision. The several decisions of Circuit Courts of Appeal construing this provision are in conflict each with the other, and with applicable decisions of this Court. Without a decision of this Court, the construction and the constitutionality of this provision is not free from grave doubt.

III.

The Circuit Court of Appeals has sanctioned a departure by the Trial Court from the accepted and usual course of judicial proceedings in the reception of evidence of other offenses, which were not relevant to any issue in this case.

IV.

There is a total absence of competent evidence that petitioner committed the crime charged in the indictment.

A. There was no competent evidence, either oral or documentary, of the *corpus delicti*, independent of the purported extrajudicial confessions or admissions.

B. A statement by a person that he was born in Chicago or in Illinois, is not a representation that he is a citizen of the United States.

ARGUMENT.

I.

Invalidity of 8 U. S. C. 746 (a) (18).

A. The challenged provision of the statute is repugnant to the due process clause of the Fifth Amendment because it is ambiguous, vague and uncertain, and men of common intelligence must speculate as to its meaning.

This provision is too vague and ambiguous to inform resident aliens what conduct on their part will constitute a criminal offense punishable by fine and imprisonment. Under the literal terms of the challenged provision of the statute an alien is subject to fine and imprisonment for falsely representing himself to be a citizen of the United States whether or not he made the representation with intent to defraud, and without regard to the occasion on which it was made. The Statute does not concern itself with the reasons prompting any person to make inquiry of the alien.

The exertions of the several Circuit Courts of Appeal to render that provision constitutional by filling the *holes* in it by constructions that are strained and conflicting only point up petitioner's contention that the provision is so ambiguous and indefinite as to be repugnant to the due process clause of the Fifth Amendment.

In *United States* v. *Achtner*, 144 Fed. 2d 49, 52 (C.C.A. 2d, opinion by Circuit Judge Clarke), the Court in holding that this provision is not assailable on constitutional grounds, construed the prohibited false representation as more than a mere untruth, but one that is made with a

"fraudulent intent." The Court there said that so severe a penalty was not intended for words spoken "to stop the prying ears of some busybody."

In *United States* v. *Romberg*, 150 Fed. 2d 116 (C.C.A. 2d, opinion by Circuit Judge Frank), the Court construed the prohibited false representation to be a criminal offense if made to any person who has some "adequate reason" for making the inquiry of the alien. No test is given for determining the nature of the *adequate reason*. The construction in the *Achtner* case that the false statement must be made with fraudulent intent is by implication rejected. In the *Achtner* case the question whether the false statement is a criminal offense is determinable by the motive or purpose of the alien. In the *Romberg* case the question is determinable by the motive or purpose of the person making the inquiry.

In *Prevost* v. *United States*, 149 Fed. 2d 747, 748 (C.C.A. 9th), the Court rejects the *fraudulent intent* and *adequate reason* theories, and holds that under the language of the challenged provision, the false representation need not be a material one.

In the case at bar the Government took the position that, "The present statute does not require proof of a fraudulent purpose in making the false statement as to citizenship." (R. 71.)

And in the case at bar the Circuit Court of Appeals cites with approval *both* the *Achtner* case and the *Romberg* case without recognizing the inconsistency of so doing.

Petitioner respectfully submits that the several interpretations by the various Circuit Courts of Appeal *after* a set of facts is presented to the Court for decision indicates that the legislation in question fails to inform resident aliens what conduct on their part will constitute a criminal

offense punishable by fine and imprisonment. A statute which forbids the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.

Connally v. *General Construction Co.* 269 U. S. 385, 391.

United States v. *Cohen Grocery Co.* 255 U. S. 81, 87-88.

The ambiguity and vagueness on the face of the statute rendering it void under the due process clause of the Fifth Amendment cannot be cured by a judicial construction which seeks to specify "details of the offense intended to be charged." The specification of details, writes into the statute what is not there. A construction by such a method is in conflict with the decision of this Court in *Lanzetta* v. *New Jersey,* 306 U. S. 451, 453.

B. The challenged provision is repugnant to the guaranty of free speech in the First Amendment in that it makes the mere telling of a lie a criminal offense.

Under a literal construction of this provision, the act which it prohibits is punishable by fine and imprisonment without regard to whether or not it offends any law, either State or Federal, and even though it be utterly harmless. (See limitation of police power and authorities at pages 71-72 of the Record.) This provision, by its broad language, subjects an alien to fine and imprisonment for making a false statement, regardless of the purpose thereof, or of the person to whom it was made, or the occasion on which it was made. A law making such an act punishable as a criminal offense is incompatible with the freedom of speech which is guaranteed to all persons by the First Amendment. The right of free speech is not a privilege to speak only

the truth, but equally, untruth, provided no law is violated, and no person is injured, in the exercise thereof. To hold otherwise, would be to sanction censorship, which is utterly incompatible with the concept of freedom of speech and of the press. (2 Cooley's Constitutional Limitations, 8th ed., 1927, p. 886.)

"The term 'person,' used in the 5th Amendment," said Mr. Justice Field in a separate opinion in *Wong Wing* v. *United States,* 163 U. S. 228, 242, "is broad enough to include any and every human being within the jurisdiction of the republic." And see *Bridges* v. *California,* 314 U. S. 252, 263, note 6. The provisions of the First and Fifth Amendments acknowledge no distinction between citizens and resident aliens. They extend their inalienable privileges to all persons and guard against any encroachment of those rights by federal or state authority. (*Bridges* v. *Wixon,* 65 S. Ct., Rep. 1443, 1456.)

C. The challenged provision is repugnant to the Tenth Amendment, for the reason that Congress in enacting it exceeded the power granted by Article I, section 8, clause 4 for the constitution, "To establish a uniform rule of naturalization."

In the *United States* v. *Achtner,* 144 Fed. 2d 49, 51-52, the Court held that this provision is not unconstitutional, on the following theories:

1. The provision is in the nature of a regulation, and "Congress has ample power to impose a regulation of this kind upon the conduct of aliens in this country."
2. The Nationality Act of 1940 was enacted "as a national defense measure in the face of impending war to tighten the control over the conduct of aliens."
3. The word falsely in the challenged provision suggests more than a mere untruth, and includes the meaning with intent to defraud.

4. The challenged provision is valid because it is "a part of the Nationality Act of 1940."

The decision in the *Achtner* case, and the theories upon which it rests, are in conflict with principles of law that have been firmly established by this Court. The statement in that case that the challenged provision is in the nature of a regulation, and "Congress has ample power to impose a regulation of this kind upon the conduct of aliens in this country," is not supported by the decisions in *United States ex rel. Vollpe* v. *Smith,* 289 U. S., 422, 425, or *Turner* v. *Williams,* 194 U. S. 279, cited in the *Achtner* opinion. This Court held in these cases that the United States can, as a matter of public policy, by congressional enactment, forbid aliens or classes of aliens from coming within its borders, and expel aliens or classes of aliens from its territory, and may take them into temporary custody to effect their expulsion. There is no suggestion in these cases that the constitutionality of a law that renders resident aliens liable to fine and imprisonment, and one that has for its object the exclusion or expulsion of aliens, are determinable by the same test. In testing the validity of the challenged provision of the statute, we are not concerned with a law prescribing what conduct on the part of resident aliens shall be cause for expelling them from the United States, but with a criminal law that exposes them to penalties. The principles that are applicable to the one are not applicable to the other.

The power to exclude aliens or expel resident aliens from this country is inherent in the United States as a sovereign nation, and in the exercise thereof, Congress may enact appropriate legislation to exclude or expel such aliens or classes of aliens whom Congress may deem undesirable (*Fong Yue Ting* v. *United States,* 149 U. S. 698, 705), but

a power to exclude or expel does not confer authority to enact a law that has for its object the imposition of punishment by fine and imprisonment of resident aliens. (*Wong Wing* v. *United States*, 163 U. S. 228, 237, 242.)

The rule is unalterable that a federal law can be enacted only in the exercise of power granted by the Constitution. That rule is unaffected by the motive that impelled the enactment of such law. The fact that the Nationality Act of 1940 was enacted at a time of impending war will not render valid a provision thereof that runs counter to the Constitution. The war was impending is true, but that fact has no bearing on the question here under consideration. The Act was not passed in the exercise of power to declare war or provide for national defense, but under the power "to establish a uniform rule of naturalization," granted to Congress by the 4th Clause of Section 8 of Article I of the Constitution. If the enactment of the challenged provision is outside the scope of that power in times of national calm, a national crisis will not place it within that scope. The imminence of war did not enlarge the constitutional power of Congress.

United States v. *Cohen Grocery Co.*, 255 U. S. 81, 87-88.

Schechter Corp. v. *United States*, 295 U. S. 495, 528.

Congress is without power to enact a law subjecting resident aliens to punishment by fine and imprisonment for misconduct that does not transgress the Naturalization law or any other Federal law. Punishment for such misconduct can only be imposed by State action, not by Federal action (*House* v. *Mayes*, 219 U. S. 270, 282; *Linder* v. *United States*, 268 U. S. 5, 17; 2 Cooley's Constitutional Limitations (8th ed., 1927), p. 1232).

II.

Interpretation and Meaning of 8 U. S. C. 746 (a) (18).

The construction of the challenged provision is inextricably linked with the constitutionality thereof. So far, no court has held that it was the congressional intent that this provision shall be construed literally. Such a construction would be subject to imprisonment an alien who, to avoid embarrassment, said that he was a citizen of the United States in reply to a casual inquiry by a stranger with whom he happened to be talking at some public place, as, for example, a hotel lobby. It is doubtful whether such a literal construction was intended by Congress. And the decisions of the Circuit Courts of Appeal which give this provision a non-literal construction are in conflict each with the other. (See Brief I, pp. 20-25, *supra.*)

The legislative history of the Act casts little light on the Congressional intent with regard to this provision. Generally, Congress regarded the *entire* Nationality Act of 1940 as dealing with the subjects of "citizenship, naturalization and expatriation."

> Senate Report No. 2150 (76th Cong. 3d Sess.; Sept. 23, 1940), p. 3.
>
> House Report No. 2396 (76th Cong. 3d Sess.; June 5, 1940), p. 1.
>
> 86 Cong. Rec. 11939 (the debate in the House).

It is highly improbable that Congress believed that the *alien* presented a potential danger to the security and welfare of our country. Statistics show that no cause for such fear existed. See "Employment of Aliens and Plant Protection" (published by National Industrial Conference Board, 247 Park Ave., N. Y.), pointing out at page 4 that "citizenship alone does not insure loyalty. It is a person's

political and social philosophy, not his birthplace, that makes him either a constructive member of American society or a potential or actual saboteur working for the destruction of democratic institutions." The varying and conflicting constructions of this provision by the several Circuit Courts of Appeal leave the mind in doubt as to the congressional intent. This doubt cannot be removed without a decision by this Court construing this provision.

III.

The Circuit Court of Appeals has sanctioned a departure by the trial court from the accepted and usual course of judicial proceedings in the reception of evidence of other offenses, which were not relevant to any issue in this case.

The testimony of Steger that petitioner represented himself to be a citizen of the United States when he applied for employment at the Studebaker plant, the South Bend Lathe Co. plant, and the Dodge plant (R. 12), and that he obtained a passport to Spain and a reentry permit by illegal means (R. 12), and the testimony of Waters that petitioner admitted to him that in 1937 he obtained a passport to Spain by using the birth certificate of his deceased brother, Emil Tandaric, and that he obtained a permit to reenter the United States by illegal means, deprived petitioner of the right to have an unprejudiced jury pass on competent and unprejudicial evidence and determine fairly from such evidence whether or not petitioner was guilty of the specific crime charged in the indictment.

These witnesses testified upon the introduction by the Government of *evidence in chief*. Their testimony was not received for the purpose of impeachment, but as a part of the Government's case. In each of these instances, peti-

tioner's counsel objected to the testimony and was overruled (R. 12, 16). And his counsel's motion that the jury be instructed to disregard that testimony was overruled (R. 16).

It was likewise prejudicial and unjustifiable to permit the prosecution to introduce in evidence exhibit 7 which recites that petitioner was in the military or naval service of a foreign government, as a member of the Lincoln Battalion of the International Brigade, and that he was arrested in 1933 for resisting an eviction, and in 1934 for assault (R. 21, items 10, 11, 14 and 15). And there was no legal sanction for introducing in evidence exhibit 10 which recites at page 4 that petitioner was a member of an organization that was engaged in influencing the political activities of a foreign government, and that he was arrested for resisting an officer and for assault; or for introducing in evidence exhibit 11 (R. 24), which purports to show that petitioner registered at a Local Selective Service Board as Robert Rebic, and stated he was born in Chicago, Illinois. These exhibits were not offered or introduced as impeaching evidence, but as evidence *in chief*.

That evidence of offenses other than the one charged in the indictment is inadmissible against the accused, is a rule that has been firmly established by this Court and by the highest courts in other jurisdictions.

Boyd v. *United States*, 142 U. S. 450, 458.
Johnson v. *United States*, 318 U. S. 189, 195.
3 Wharton's Criminal Evidence (11th ed., 1935), p. 2213.
8 Ruling Case Law, pp. 198-199.

On cross-examination, petitioner was ordered, over his objections, to answer questions which required him to tell the jury that in 1937 he went to Spain with a passport which he obtained by illegal means, "to fight on the Loyal-

ist side'' (R. 27). The introduction of that evidence violated not only the rules of cross-examination and the rule against the introduction of evidence of other offenses, but was calculated to prejudice the jury against the petitioner on *political* grounds. It is well known that all who gave aid to the Loyalists were subjected for years to a relentless campaign of vituperation and calumny in the press and by radio. The Lincoln Battalion was a special target of that campaign. The probable effect thereof on the feelings of the jurors, or some of them, toward the petitioner is not hard to see. The sole charge in the indictment was that petitioner secured employment by falsely representing himself to be a citizen of the United States. His guilt or innocence of that charge was not dependent on his activity in the Spanish conflict. The evidence that was thus admitted was not relevant to any issue in this case. To what extent the prejudicial evidence influenced the jury cannot be known, but that it is reversible error admits of no doubt.

The rulings on evidence of other offenses was sanctioned in the instant case by the Circuit Court of Appeals (R. 64). These rulings are in conflict with the applicable decisions of this Court in *Boyd* v. *United States,* 142 U. S. 450, 458 and *Johnson* v. *United States,* 318 U. S. 189, 195.

IV.

There is a total absence of competent evidence that petitioner committed the crime charged in the indictment.

A. There was no competent evidence, either oral or documentary, of the corpus delicti, independent of the purported extrajudicial confessions or admissions.

The oral testimony, independent of petitioner's admis-

sions on the trial, is the following: Chapman testified that he interviewed petitioner "when he *first sought employment* and that the defendant told him he was a citizen" (R. 15).

We do not know how many times and how frequently petitioner sought employment, nor when he first sought employment. We do know that he had been seeking employment not only a number of times at the Bendix plant, but also at the Studebaker plant, the South Bend Lathe Co. plant, the Dodge plant (R. 12). There is no evidence that the *first* time he sought employment was subsequent to January 14, 1941, when the Nationality Act of 1940 went into effect. Reinke testified "that he conferred with Steve Tandaric (R. 15), with reference to Exhibit 4" (Appendix C). Manifestly the oral evidence was not sufficient to submit the case to the jury.

The documentary evidence consists of exhibit 1 (R. 13-14), and exhibits 2, 3 and 4 (Appendices A, A-1, B, and C). Exhibit 1 in an admission or confession obtained by Steger, an agent of the Federal Bureau of Investigation. The recitations in this document are related only to statements contained in exhibits 3 and 4, and will be considered later.

Exhibit 2 is a card, a facsimile of which is shown in the appendix hereto, as appendices A and A-1. The face of this exhibit (Appendix A) bears the following memorandum: "I have seen the seniority list and the names of those men hired before me. And I have no relatives. Bob Rebic." There is not an iota of evidence that the recitations on the reverse side of this card were written by the petitioner or that he even saw these recitations before the trial. The trial Court's ruling admitting this document (as also exhibits 3 and 4) is based entirely on the following authentication. Harold Reinke, formerly a Personnel Di-

rector and Superintendent of Industrial Relations of the Bendix Corporation stated that in his capacity as such director,

> "he had charge of the records of the Bendix Home Appliance, Inc.," and that exhibits 2, 3, 4 and 5 "represented the employment record of the defendant, Steve Tandaric, in his custody, and so identified the exhibits * * *." (R. 15.)

The following statement appears in the bill of exceptions:

> "The evidence introduced at the trial by the United States connected and identified the defendant with Government's exhibits 1, 2, 3, 4, 7, 8, 9, 10 and 11." (R. 60.)

There is no dispute in regard to the fact that the names Bob Rebic and Steve Tandaric are the names of petitioner, and that petitioner went under the name of Bob Rebic when he worked for the Bendix Corporation, and that he appears on the records of that corporation under the name of Bob Rebic. He had in fact changed his name Bob Rebic several years before he was given employment by the Bendix Corporation (R. 26). The only thing that is important is the fact that exhibit 2 is an office record that was apparently prepared by a clerk of the Bendix Corporation, not by petitioner. There is not even any evidence that the name Bob Rebic on the face of this card was written by petitioner. But if it had appeared from the evidence that he signed the *seniority memorandum* on the face of this card, there would yet be a total absence of proof that he even read or saw the reverse side thereof. If he signed the memorandum, he obviously did it when the card was handed to him by a clerk for the purpose of recording his seniority rating, and immediately taken from him and placed in the files of the corporation. (See *Prevost* v. *United States,* 149 Fed. 2d, 747, 749, C. C. A. 9th, 1945.)

In the opinion of the Circuit Court of Appeals it is stated that,

> "Chapman, formerly general manager of Bendix, testified that he conferred with defendant in the preparation of exhibith 2 (factory employment application in which defendant was asked 'are you a U. S. citizen?' and to which he answered 'Yes.'" (R. 63.)

This statement is wholly incorrect, as pointed out in the petition for rehearing (R. 72-73). The petition for rehearing was denied without correction of this erroneous statement.

The recitations in the confession or admission (Exhibit 1, R. 13-14) as to false statements made by petitioner in July 1941 and February 1942, refer to statements contained in exhibits 3 and 4 (Appendices B and C). These recitations are that petitioner was born in "Chicago" and "Ill."

Assuming for the present that there is evidence that these exhibits are his writings, it cannot be said that he did thereby "falsely represented himself to be a citizen of the United States." One may be born in the United States and yet not be a citizen thereof at birth, and he may be a citizen of the United States at birth and cease to be a citizen thereof at a later time, as by expatriation. The Fourteenth Amendment provides that, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

Section 601 of Title 8 U. S. C., 1940 ed., declares as follows: "The following shall be nationals and citizens of the United States at birth: (a) A person born in the United States and subject to the jurisdiction thereof."

The prerequisite to citizenship of a person at birth is that he shall then be "subject to the jurisdiction of the United States."

Not all persons born in the United States are citizens thereof at birth. In *Lam Mow* v. *Nagle,* 24 Fed. 2d 316, 318, the Court quoted the following from the opinion written by Mr. Justice Story in *Inglis* v. *Sailors Snug Harbor,* 3 Pet. (28 U. S.) 99:

> "Two things usually concur to create citizenship: First, birth locally within the dominions of the sovereign; and secondly, birth within the protection and obedience, or, in other words, within the ligeance of the sovereign. That is, the party must be born within a place where the sovereign is, at the time, in full possession and exercise of his power, and the party must also, at his birth, derive protection from, and consequently owe obedience or allegiance to, the sovereign, as such de facto."

See also,

Duncan v. *United States,* 68 Fed. 2d 136, 143.
Reynolds v. *Haskins,* 8 Fed. 2d 473, 475.
Louie Lit v. *United States,* 238 Fed. 75, 76.
Stadtler [*Maranek*] v. *School District,* 71 Minn. 311, 317-318, 73 N. W. 956, 959.

In *Elk* v. *Wilkins,* 112 U. S. 94, this Court speaking through Mr. Justice Gray, says at page 101-102:

> "The persons declared [by the Fourteenth Amendment] to be citizens are 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof.' The evident meaning of these last words is, not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction, and owing them direct and immediate allegiance. And the words relate to the time of birth in the one case, as they do to the time of naturalizat n in the other. Persons not thus subject to the jurisdiction of the United States at the time of birth cannot become so afterwards, except by being naturalized."

The question now under consideration is discussed in an elaborate opinion in *United States* v. *Wong Kim Ark,* 169 U. S. 649. At page 692 the Court speaks of Scotch parents who are *domiciled* in the United States, and at page 693, of *resident aliens,* while *domiciled* here, and at page 705, of Chinese parents who have a *permanent domicile* in the United States. The meaning of the phrase, *subject to the jurisdiction* of the United States is there discussed at length at pages 693, 694, and 724-725.

It is therefore clear that there is no evidence in this case to prove the corpus delicti. In the absence of such evidence, the purported admission contained in exhibit 1 (R. 13-14), and in the testimony of Steger, an agent of the Federal Bureau of Investigation, were not admissible in evidence. While that exhibit and the testimony of that witness had no probative value in law, they carried weight with the jury and were highly prejudicial. (*Sprinkle* v. *United States,* 150 Fed. 56, 59.)

In 2 Wharton's Criminal Evidence (11th ed., 1935), sec. 640, p. 1069, the author says: "It is practically universally held that the corpus delicti of a crime cannot be proved by an extrajudicial confession standing alone, but must be proven independently of it." An extrajudicial confession does not justify a conviction when the corpus delicti has not been shown otherwise. (Underhill on Criminal Evidence (3d ed., 1923), sec. 241, p. 345.) To the same effect, *Gulotta* v. *United States,* 113 Fed. 2d 683, 685-687.

The submission of a case to a jury in the absence of competent evidence to prove the specific crime charged in the indictment, whether the accused be a citizen or an alien, is a departure from the accepted and usual course of judicial proceedings. The Circuit Court of Appeals has in this

case "so far sanctioned such departure by a lower court, as to call for an exercise of this Court's power of supervision." (Sec. 5 (b) of Rule 38 of the Revised Rules of this Court.)

Conclusion.

It is respectfully submitted that the vital questions presented by the 18th subdivision of 8 U. S. C. 746 (a) with respect to the construction and the constitutionality thereof, ought to be settled by this Court. So, too, the questions presented by the departure by the trial Court from the accepted course of judicial proceedings and the sanctioning thereof by the Circuit Court of Appeals for the Seventh Circuit, call for the exercise of this Court's power of supervision.

It is respectfully submitted that the writ of certiorari prayed for in the petition ought to be granted.

Respectfully submitted,

HAROLD J. FINDER,
Counsel for Petitioner.

APPENDIX

Face of Government Exhibit 2.

Write in this Space Three References and Their Addresses

MISS JEAN LIPSKI
221 W. Washington Ave
So. Bend

MR. SAM TARPOFF
6116 Columbia Ave.
Hammond Ind.

MR. SAMUAL L DAVIS
824 LINDSEY
SO. BEND IND.

Govt Ex 2

Do you have any relatives working at Bendix Home Appliances, Inc.? No

If so, give name or names

LEAVE THIS SPACE BLANK

Michael Vayda. 190 1/2 W Colfax

I have seen the seniority list and the names of those men hired before me and I have no relatives. Bob Vance

Reproduced exact size

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APPENDIX A. 1.

Reverse Side of Government Exhibit 2.

FACTORY EMPLOYMENT APPLICATION
BENDIX HOME APPLIANCES, INC.

O.K. O.K. JB

This card will be ignored unless filled out completely. Answer All Questions.

NAME BOB REBIC Social Security No. 316-18-6532

ADDRESS 221 W. WASHINGTON AVE. PHONE ✓

How Long in South Bend 4 MTHS. Are you U.S. Citizen YES What Descent AMERICAN Where Born CHICAGO, ILL.

Married Yes Single Dependents NONE Ages of Children

EDUCATION	Public School	Yrs.	Perochial School	Yrs.	High School	Yrs.	College	Yrs.
	7							

Last Place of Employment FARMING-(FARM MACHINE REPAIR WORK) How Long 10 YRS. Why Did You Leave QUIT

Address R.D. #2 WADSWORTH, OHIO = MR. MIKE MAROVIC

Occupation GENERAL FARM HAND Hourly Rate WEEKLY

Employed previously by SAM TARPOFF How Long 1921 TO 1931 Why Did You Leave NO BUSINESS

Address 6116 COLUMBIA AVE HAMMOND IND.

Occupation BARBER Hourly Rate $10.00 WK. COMM. AND

To what Fraternal, Religious, or other Organizations do you belong? NONE

(Arc-welding)

Age 37

Height 5'11"

Weight 180

Color WHITE

Sex MALE

Do You have a Trade? YES Name of Trade BARBER-FARMER How Long Worked at It 20 YRS

Do You Stay at Home NO Board and Room YES Rent Buying Home Own Home

Have You Had Specialized Training of Any Kind NOT SPECIALIZED

SOME ARC WELDING

Work Desired PRODUCTION WORK Date 5/4/41

APPENDIX B.

Government Exhibit 3.

BENDIX HOME APPLIANCES, INC.

INFORMATION RECORD.

Dept..... Clk. No..... Date 7/2/41 Occupation.....
....

GENERAL DATA:

1. Name Bob Rebic. 2. Age 37.
3. Address: 2211 W. Washington. 4. Telephone.....

Previous Occupations: Dates:

A. ..... From..... to.....
B. ..... From..... to.....
C. ..... From..... to.....

5. Single or Married Married. 6. Birthplace Chicago.
7. Vaccination Date Childhood. 8. Serious Illnesses No.
9. Severe Injuries No. 10. Surgical Operations No.
11. Physical Defects or Impairments None.
12. Present Health Good.

Remarks: Mazzini—Neg. 7-3-41.
(In Longhand) BOB REBIC.

PHYSICAL FINDINGS:

1. Height and Weight 5'9" 171¾.
2. Pulse—Rate 96 Rhythm Reg.
3. Temperature 99.
4. Eyes .....
   Dist. vision—R..... L..... (w.g.) R..... L.....
   Near vision—R..... L..... (w.g.) R..... L.....
   Color Sense .....
5. Ears .....
   Hearing—R..... L.....
6. Nose .....

7. Mouth .....
8. Throat .....
9. Lungs .....
10. Heart .....
11. Blood vessels .....
12. Nervous system .....
13. Abdomen and Groins .....
14. Genitals .....
15. Skin .....
16. Glands .....
17. Spine and Joints .....
18. Extremities .....
19. Blood pressure—Syst. 130. Diast. 80.
20. Urine—React.....Sp. gr.....Alb. Neg. Sugar Neg.

Remarks .....

CLASSIFICATION:

Class A ☒ Class B ☐ Class C ☐ Class D ☐

Remarks .....

.....
Attending Nurse.

C. SELBY,
Examining Physician.

("O.K." written in longhand across face of above exhibit.)

APPENDIX C.

Government Exhibit 4.

BENDIX HOME APPLIANCES, INC.

INFORMATION RECORD.

Dept..... Clk. No..... Date 2/16/42 Occupation.....

GENERAL DATA:

1. Name Bob Rebic. 2. Age 38.
3. Address: 2211 W. Washington. 4. Telephone.....

Previous Occupations: Dates:

A. ..... From..... to.....
B. ..... From..... to.....
C. ..... From..... to.....

5. Single or Married M. 6. Birthplace Ill.
7. Vaccination Date 1918. 8. Serious Illnesses No.
9. Severe Injuries No. 10. Surgical Operations No.
11. Physical Defects or Impairments No.
12. Present Health Good.

Remarks: Mazzini—Neg. 2-16-42.
(In Longhand) BOB REBIC.

PHYSICAL FINDINGS:

1. Height and Weight 5'9½" 180.
2. Pulse—Rate 84 Rhythm Reg.
3. Temperature 99.
4. Eyes .....
   Dist. vision—R..... L..... (w.g.) R..... L.....
   Near vision—R..... L..... (w.g.) R..... L.....
   Color Sense .....
5. Ears .....
   Hearing—R..... L.....
6. Nose .....

7. Mouth .....
8. Throat .....
9. Lungs .....
10. Heart .....
11. Blood vessels .....
12. Nervous system .....
13. Abdomen and Groins .....
14. Genitals .....
15. Skin .....
16. Glands .....
17. Spine and Joints .....
18. Extremities .....
19. Blood pressure—Syst. 130. Diast. 80.
20. Urine—React.....Sp. gr..... Alb. Neg. Sugar Neg.

Remarks .....

CLASSIFICATION:

Class A ☒ Class B ☐ Class C ☐ Class D ☐

Remarks .....

.....
Attending Nurse.

C. SELBY,
Examining Physician.

("O.K." written in longhand across face of above exhibit.)